IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPLICATION NO.5 OF 1999

The Commissioner of Central
Excise, Mumbai - III .. Petitioner.

V/s.

Weldekar Laminates Pvt.Ltd. .. Respondent.

Mr.P.S. Jetly for the petitioner.

Mr.Prakash Shah with Mr.Jitu Motwani for the respondent.

CORAM : DR.S. RADHAKRISHNAN &
J.P. DEVADHAR, JJ.

DATED : 27TH FEBRUARY, 2006.

P.C. :

1. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

2. Mr.Jetly, the learned counsel for the petitioner-revenue points out that identical questions arose before the Tribunal for which reference has already been sought by the CEGAT, New Delhi in Collector of Central Excise, Jaipur V/s. Rajasthan Explosives & Chemicals Ltd. [1995 (78) E.L.T. 110 (Tribunal)] and also in Collector of Central Excise, New Delhi V/s. Maruti Udyog Limited [1995 (78) E.L.T. 27 (Tribunal)].

3. Under the aforesaid facts and circumstances, the order impugned in the present central excise application dated 13th October, 1991 whereby the CEGAT has refused to refer the said questions stands quashed and set aside.

4. We, now direct the CEGAT to send the statement of facts with regard to this central excise application referring substantial questions of law, which read as under :

> "1. Whether in the matter of adjustment of Modvat credit, Rule 57E is to be interpreted independently of the provisions of Rules 57A or Rule 57A shall have an over-riding effect on the provisions of Rule 57 E ?
>
> 2. Whether the credit of differential duty in respect of inputs on account of escalation value could be allowed in terms of Rule 57E as it existed prior to amendment by Notification No.117/87-CE dated : 15-04-1987 ?
>
> 3. Whether the amendments of Rule 57E of Central Excise Rules vide Notification 25/87 dated 01/03/1987 and 117/87 dated 15/04/87 providing for variation of credit consequent to subsequent recovery of more duty on the inputs were clarificatory in nature and whether they wee accordingly retrospective in their effect ?"

5. The application is, accordingly, allowed.

(DR.S. RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)